

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of	)	
	)	
KATHLEEN M. SLOAN	)	File No. D031286
220 MHz Station WPCM897	)	
Birmingham, Alabama	)	
	)	
KATHLEEN B. EDWARDS	)	File No. D031287
220 MHz Station WPCQ625	)	
Birmingham, Alabama	)	
	)	
MARIA DANCS	)	File No. D037957
220 MHz Station WPBN294	)	
Atlanta, Georgia	)	

**ORDER**

**Adopted: January 24, 2000**

**Released: January 24, 2000**

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. Before us are three petitions for reconsideration filed by Kathleen M. Sloan (Sloan), Kathleen B. Edwards (Edwards) and Maria Dancs (Dancs) seeking reconsideration of the denial by the Land Mobile Branch (Branch) of their individual requests for a waiver of section 90.753(a) of the Commission's rules and the dismissal of their respective applications for modification of their non-nationwide Phase I 220 MHz systems.<sup>1</sup> For the reasons discussed below, we deny all three petitions for reconsideration and affirm the dismissal of their applications for modification.

**II. BACKGROUND**

2. Pursuant to the 220 MHz *Second Report and Order*, non-nationwide Phase I 220 MHz licensees were allowed to relocate their base stations within certain parameters.<sup>2</sup> Licensees with base

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<sup>1</sup> Sloan and Edwards filed identical petitions, with the exception of their particular license information. See Petition for Reconsideration filed by Kathleen M. Sloan on February 26, 1997 (Sloan Petition) and Petition for Reconsideration filed by Kathleen B. Edwards on February 26, 1997 (Edwards Petition). Dancs filed a completely separate petition, but because it involves the same basis for the request for waiver as Sloan and Edwards, we have consolidated the order for administrative convenience. See Petition for Reconsideration filed by Maria Dancs on January 17, 1997 (Dancs Petition).

<sup>2</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 11 FCC Rcd. 3668 (1996) (220 MHz *Second Report and Order*).

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stations authorized inside any Designated Filing Area (DFA)<sup>3</sup> were permitted to relocate their base stations up to one-half the distance over 120 kilometers toward any authorized co-channel base station, to a maximum of eight kilometers.<sup>4</sup> Licensees with base stations authorized outside the boundaries of any DFA were permitted to relocate their base stations up to one-half the distance over 120 kilometers toward any authorized co-channel base station, to a maximum of 25 kilometers, so long as they did not locate their base station more than 8 kilometers inside the boundaries of any DFA.<sup>5</sup> In addition, licensees that had been granted Special Temporary Authority (STA) on or before the adoption date of the *220 MHz Second Report and Order* were permitted to seek permanent authorization at the STA site if the licensee certified that it had either (1) constructed its base station and placed the base station in operation, or commenced service at that site; or (2) taken delivery of its base station transceiver on or before such adoption date.<sup>6</sup>

3. The Commission also recognized in the *220 MHz Second Report and Order* that in certain areas of the country it was possible that the technical characteristics of base station sites available to a licensee under the relocation procedures may have been considerably inferior to the technical characteristics of currently licensed sites and sites that may exist at nearby, more elevated locations.<sup>7</sup> Therefore, the Commission stated it would entertain waiver requests by licensees authorized in the Los Angeles and Seattle areas, as well as any other urban areas with comparable terrain features, to relocate their stations to higher elevations that may be situated more than eight kilometers (or 25 kilometers, for licensees authorized outside DFAs) from their authorized locations.<sup>8</sup> The Commission then specified that a licensee seeking such a waiver must provide (1) a showing that the terrain in question does, in fact, present unique technical and operational problems, and (2) a technical analysis demonstrating that in relocating its base station to its desired location, the licensee will provide service to substantially the same geographic area that it was authorized to serve initially.<sup>9</sup>

4. Sloan and Edwards each have a license to operate 220 MHz systems in Birmingham, Alabama, under call signs WPCM897 and WPCQ625, respectively. Dancs has a license to operate a 220 MHz system in Atlanta, Georgia, under call sign WPBN294. On April 16, 1996, both Sloan and Edwards filed applications for modification of their licenses to relocate their respective 220 MHz systems to another site approximately 21 kilometers from their originally licensed site.<sup>10</sup> Likewise, on May 1, 1996, Dancs filed

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<sup>3</sup> The Commission established 50 Designated Filing Areas in its initial licensing of the 900 MHz Specialized Mobile Radio band. See *Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands*, *Public Notice*, DA 86-173, 1 FCC Rcd. 543 (1986).

<sup>4</sup> *220 MHz Second Report and Order*, 11 FCC Rcd. at 3670, ¶9. See also 47 C.F.R. § 90.753(a).

<sup>5</sup> *Id.* See also 47 C.F.R. § 90.753(b).

<sup>6</sup> *Id.* at 3673, ¶¶ 15-16. See also 47 C.F.R. § 90.753(c).

<sup>7</sup> *Id.* at 3671, ¶ 11.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Both Sloan and Edwards were originally licensed at the same location and both proposed to relocate to the

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an application for modification of her license to relocate her 220 MHz system approximately 58 kilometers from her originally licensed site. Because all three authorized base stations were located within a DFA and the proposed relocations were greater than the eight kilometers allowed by section 90.753(a) of the Commission's rules, each of the petitioners requested a waiver based on the "unique technical and operation problems" of the terrain surrounding their system.

5. On December 18, 1996, the Branch denied Dancs's waiver request, and the following day, dismissed her modification application on the grounds that the waiver request was denied. In the dismissal of the waiver request, the Branch stated that the contour analysis that Dancs submitted did not demonstrate that the area covered by the 38 dB $\mu$  contour of her proposed site was substantially the same as the area covered by the 38 dB $\mu$  contour of her originally licensed site.<sup>11</sup> The Branch found that Dancs's proposed station would only serve one quarter of the station's originally authorized service area.<sup>12</sup> Because Dancs did not demonstrate unique problems that would be resolved by a relocation 58 kilometers away, and that closer alternate locations were unavailable, the Branch denied her request for waiver of section 90.753.<sup>13</sup>

6. On January 28, 1997, the Branch denied both Sloan's and Edwards's waiver requests and dismissed their modification applications.<sup>14</sup> In so doing, the Branch stated that neither Sloan nor Edwards had sufficiently demonstrated that the terrain in Birmingham, Alabama presented unique technical and operational problems similar to those of Southern California.<sup>15</sup> Specifically, the Branch stated that Birmingham is not surrounded by large mountain ranges which will confine a system's signal to the city.<sup>16</sup> Moreover, the Branch observed that neither licensee was being forced to relocate, but rather they simply wanted to extend their coverage area.<sup>17</sup>

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same site. *See* Application for Modification of Station WPCM897, filed by Kathleen M. Sloan, on April 16, 1996 (Sloan Application), and Application for Modification of Station WPCQ625, filed by Kathleen B. Edwards, on April 16, 1996 (Edwards Application).

<sup>11</sup> Dancs Dismissal at 1. The Branch added that this is readily apparent when the predicted radius for 220 MHz stations is 35 kilometers and Dancs proposed relocation of 58 kilometers. *Id.* at 1-2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *See* Letter of Terry L. Fishel, Chief, Land Mobile Branch, to Henry A. Solomon, attorney for Kathleen M. Sloan, dated January 28, 1997 (Sloan Dismissal) and Letter of Michael J. Regiec, Deputy Chief, Land Mobile Branch, to Henry A. Solomon, attorney for Kathleen B. Edwards, dated January 28, 1997 (Edwards Dismissal).

<sup>15</sup> Sloan Dismissal at 1; Edwards Dismissal at 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

### III. DISCUSSION

#### A. Dancs Request for Waiver

7. In her petition for reconsideration, Dancs asserts that the Branch erred in denying her waiver request because she met both the general waiver requirements and those specifically set out in paragraph 11 of the *220 MHz Second Report and Order*.<sup>18</sup> Dancs claims that she adequately demonstrated that unique technical and operational problems exist in the form of signal blocking and shadowing due to high-rise buildings built after she constructed her station.<sup>19</sup> She also claims to have demonstrated that there was no reasonable alternative site available within 8 kilometers of her licensed site that would improve her transmission.<sup>20</sup> To support her claims, Dancs points to two other licensees that were granted modification to relocate their base stations from the same originally licensed site as Dancs and that had made the same demonstration for waiver.<sup>21</sup> However, in both of these cases, the licensees' proposed base stations were considerably closer to their originally licensed site than Dancs was requesting, and proposed to provide service to substantially the same geographic area they were authorized to serve pursuant to their original authorizations.<sup>22</sup> Dancs proposed a relocation of 58 kilometers, a distance well beyond the expected 35 kilometer intended service radius of a 220 MHz system. Therefore, we find that the Branch was correct in determining that Dancs's proposed relocation would not provide service to substantially the same geographic area it was authorized to serve.

8. Dancs also argues that the language in the second provision of paragraph 11 of the *220 MHz Second Report and Order* is ambiguous because the Commission did not provide an exact definition of what constitutes "service to substantially the same geographic area it was authorized to serve."<sup>23</sup> Dancs argues that this language could be interpreted to mean "service to substantially the same population centers as the licensed site, but not necessarily the same geographic area."<sup>24</sup> We disagree. While population may be taken into account, the language in paragraph 11 of the *220 MHz Second Report and Order* specifically speaks in terms of geographic area, not population centers.<sup>25</sup> In Dancs's case, the proposed move was 58 kilometers with only one quarter overlap of service contours. We affirm the Branch's conclusion that the proposed site would not be serving substantially the same geographic area.

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<sup>18</sup> Dancs Petition at 3-6.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> See Application for Modification of Anthony Andrikopoulos, Station WPCX366, File No. D037954 (proposed relocation distance was 35 kilometers) and Application for Modification of Rega Associates, Station WPBM590, File No. D037956 (proposed relocation distance was 23 kilometers).

<sup>23</sup> Dancs Petition at 5-6.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *220 MHz Second Report and Order*, 11 FCC Rcd. at 3671, ¶ 11.

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9. Finally, Dancs argues that because of the possible ambiguity in paragraph 11 of the *220 MHz Second Report and Order*, she should be allowed to amend her modification application to bring it into compliance with the Commission's interpretation.<sup>26</sup> Dancs points to the fact that the Commission allowed a number of applicants to amend their applications to provide certification statements in accordance with section 90.755 of the Commission's rules, thereby making their applications acceptable for filing.<sup>27</sup> Sections 1.918(b) and 90.161(a) of the Commission's rules allow an applicant to amend its application as a matter of right *prior* to the grant of that application.<sup>28</sup> Amendments to a modification application *after* the grant of the modification would change the limited nature of the relocation procedures established in the *220 MHz Second Report and Order*, essentially allowing modifications at any time, even after the limited window for relocation ended. Therefore, we will not grant Dancs's request to amend her application after it has been dismissed.

### B. Sloan and Edwards Requests for Waiver

10. In their petitions for reconsideration, Sloan and Edwards counter the Branch's assertion that the terrain around Birmingham, Alabama does not pose unique technical and operational problems by submitting an engineering statement.<sup>29</sup> The engineering statement asserts that ". . . the terrain in the Birmingham, [Alabama] area . . . is very rugged with high elevation ridges to the immediate east, southeast and northeast of the City."<sup>30</sup> It also asserts that the proposed service contour overlaps the authorized contour by 61%, primarily in the Birmingham metropolitan area.<sup>31</sup> This statement is the only evidence Sloan and Edwards offer to prove that the terrain is rugged and mountainous. We believe that this information by itself is inadequate to warrant a waiver. Sloan and Edwards fail to present any substantial evidence that would support a finding that the circumstances of the Birmingham site would merit the kind of special limited consideration illustrated by the named examples of Seattle and Los Angeles.<sup>32</sup> Therefore, we find the Branch properly denied Sloan's and Edwards's requests for a waiver for

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<sup>26</sup> Dancs Petition at 7. Dancs submitted an amendment to her modification application with an alternative engineering proposal specifying a different site for relocation of Dancs's base station, which is only 35 kilometers from Dancs's licensed site and is the same site approved for one of the other licensees whose original site was at the same location as Dancs's licensed site (*i.e.*, Application File No. D037954). *Id.* at 8.

<sup>27</sup> Dancs Petition at 7.

<sup>28</sup> 47 C.F.R. §§ 1.918(b) and 90.161(a).

<sup>29</sup> *See* Engineering Statement by Raymond C. Trott, P.E., of Trott Communications Group, Inc., dated February 8, 1997, as Exhibit B to both Sloan Petition and Edwards Petition. Again, both Sloan and Edwards submitted identical engineering statements with simply a change in the licensee name, call sign and file number.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> We also note that under the *220 MHz Memorandum Opinion and Order on Reconsideration*, Petitioners have the opportunity to "fill in" the service contour created at their originally licensed site. *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,

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failure to provide a showing that the terrain in question does, in fact, present unique technical and operational problems.<sup>33</sup>

**IV. CONCLUSION**

11. Dancs fails to demonstrate that the proposed relocation site would serve substantially the same geographic area as her originally authorized site, while Sloan and Edwards do not adequately demonstrate that the Birmingham, Alabama area poses unique technical and operational problems that would warrant a waiver of the relocations procedures created in the *220 MHz Second Report and Order*. Therefore, we deny the three petitions for reconsideration and affirm the Branch's dismissal of their corresponding applications for modification.

**V. ORDERING CLAUSES**

12. Accordingly, pursuant to our authority under sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331, 1.106 and 90.753 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, 90.753, IT IS ORDERED that the petition for reconsideration filed by Kathleen M. Sloan on February 26, 1997 IS DENIED.

13. IT IS FURTHER ORDERED, pursuant to our authority under sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331, 1.106 and 90.753 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, 90.753, that the petition for reconsideration filed by Kathleen B. Edwards on February 26, 1997 IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to our authority under sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331, 1.106 and 90.753 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, 90.753, that the petition for reconsideration filed by Maria Dancs on January 17, 1997, IS DENIED.

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William W. Kunze  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

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*Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd. 14,569, 14,616, ¶ 97 (1998). See also 47 C.F.R. §745. Moreover, because we find the evidence of unique technical and operational problems insufficient in this case, we need not address whether a 61 percent overlap constitutes "substantially the same geographic area."

<sup>33</sup> Because the first requirement has not been met, we need not address if Sloan's and Edwards's proposed sites provide substantially the same geographic area for which they were originally authorized.